

**THE SURFACE RIGHTS BOARD OF MANITOBA
BOARD ORDER**
Under The Surface Rights Act, C.C.S.M. c. S235

Hearing:
(no hearing held)

Order No: 09-2015

File No. 12 -2014

Page 1

Date issued: January 13, 2015

BEFORE: Clare Moster, Acting Presiding Member
Russell Newton, Board Member

Barbara Miskimmin, Board Administrator

BETWEEN:

Landowner

Gerry Lane Enger & Bonnie Marie Enger

- AND -

Operator:

EOG Resources Canada Inc.

CONCERNING: SW¼ 6-3-29 WPM in the Province of Manitoba (the "Lands").

PURPOSE OF ORDER:

Termination of Right of Entry & Compensation Order No. 12-2013 (the "Order") granted to EOG Resources Canada Inc. on September 10, 2013 for right of entry and compensation for surface rights to construct an underground gas pipeline across the Lands.

**TERMINATION OF RIGHT OF ENTRY & COMPENSATION ORDER
FOR A GAS PIPELINE**

BACKGROUND:

On December 21, 2012 the Operator applied to the Board for right of entry and compensation orders pertaining to 10 parcels of land involving 9 separate landowners ("the landowners") with whom it had been unsuccessful in attempting to negotiate agreements pertaining to a gas pipeline it was planning to construct.

On May 7, 2013 Pipeline Construction Permit No. 2013-04 was issued to the Operator by the Minister of Innovation, Energy and Mines, under the provisions of *The Oil and Gas Act*. The Permit established the route of the pipeline and the conditions pertaining to construction.

The Board held a hearing pertaining to the application in Virden on June 18 and July 15 and 16, 2013.

On September 10, 2013 the Board issued nine (9) right of entry and compensation orders ("the Orders"). The Order was one (1) of the orders issued. The Order granted the Operator right of entry subject to terms and conditions, and required the Operator to pay compensation to the Landowner in the amount of \$1,250.00 per acre for the pipeline right of way and \$625.00 per acre for the temporary work space, prior to the Operator exercising the right of entry or within 60 days of the issuance of the Order, whichever occurred first. The Orders had similar right of entry conditions and compensation requirements.

On December 8, 2014 the Board was advised by the landowners that a successfully negotiated agreement with the Operator regarding matters pertaining to the Orders had been reached and the Operator had agreed to the termination of the Orders.

The Board understands that little or no construction work has taken place for the pipeline and that the Operator has paid the compensation required by the Order.

By letter to the Board dated December 11, 2014 the Operator provided confirmation to the termination request by the landowners and consented to the termination of the Orders.

On December 15, 2014 the Operator made application to the Minister of Mineral Resources to cancel Pipeline Construction Permit No. 2013-04. By letter dated December 23, 2014 the Minister informed the Operator that the Construction Permit was cancelled and any lands disturbed as a result of pre-construction activity were to be rehabilitated.

By letter dated December 22, 2014 the Board notified the landowners and the Operator that termination orders were being prepared.

ISSUES:

1. Should a termination order be made, and does the Board have authority to issue a termination order without conducting a hearing?
2. What, if any, terms and conditions should be in the Order?
3. Should costs be awarded?

DECISION:

Upon considering the situation related to the Order:

It is the Order of This Board That:

1. Board Order No. 12-2013 is hereby terminated and the Operator is ordered to take action necessary to have any caveat filed against the Lands pertaining to the Order removed within 60 days of the issuance date of this Order.
2. The Board makes no award for costs.

REASONS FOR DECISION:

1. Should a termination order be made, and does the Board have authority to issue a termination order without conducting a hearing?

Section 34 of *The Surface Rights Act* states:

Termination of right of entry

34(1) Where at any time after the expiration of three months from the date of an order granting to an operator a right of entry upon land, the operator has not commenced to exercise the right granted to the operator or the operator has ceased to use the land or interest therein for the purposes granted by the order, the owner or occupant may apply to the board for the termination of the right.

Board to fix date of hearing

34(2) Upon receipt of an application under subsection (1) the board shall fix a date for a hearing of the application and shall serve notice thereof on all parties concerned in such manner as the board deems proper.

Order terminating right of entry

34(3) The board may, after the hearing pursuant to subsection (2), make an order terminating the right of entry on the land or any part thereof.

Consent of operator

34(4) Notwithstanding subsection (2), where the operator consents to the making of an order, the board may make an order terminating the right of entry without conducting a hearing.

The Operator has not commenced to exercise the right of entry granted to it by the Order. The cancellation of Pipeline Construction Permit No. 2013-04 extinguishes all rights and privileges pertaining to construction granted by the Permit. The landowners have made application for termination of the Orders in accordance with Section 34 of *The Surface Rights Act*. The Operator in its letter to the Board dated December 11, 2014 advised the Board that it agreed to the termination of the Orders.

The Board has determined it has the authority to issue a termination order without conducting a hearing.

2. What, if any, terms and conditions should be in the Order?

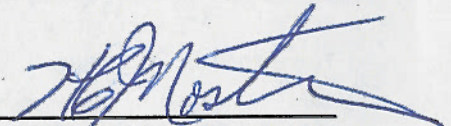
The Board issued forty (40) termination of right of entry orders in 2014 relating to another pipeline that was not constructed. In each of those Orders the Board ordered the Operator to take action necessary to have any caveat filed against the title to the affected land removed within 60 days of the issuance of the Order.

The Board considers this to be a reasonable condition to be included in this Order.

3. Should costs be awarded?

Neither party has requested costs related to the issuance of this Order, and the Board sees no justification to award costs.

Decision delivered this 13th day of January, 2015.



H. Clare Moster,
Acting Presiding Member